

LABOUR DEPARTMENT

The 11th November, 1994

No. 14/13/87-6Lab./866.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s M. D. Haryana State Federation of Co-op. Wholesale Store Ltd., Chandigarh *versus* Anup Singh :—

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 214 of 1994

between

SHRI ANUP SINGH, S/O SHRI CHATTAR SINGH, VILLAGE & P.O. DUMERKHA,
DISTRICT JIND

.. Workman

and

THE MANAGEMENT OF M/S MANAGING DIRECTOR, THE HARYANA STATE
FEDERATION OF CO-OPERATIVE WHOLESALE STORE LTD., S. C. O. 1014—15,
SECTOR 22-B, CHANDIGARH. (2) DISTRICT MANAGER, CONFED AREA
OFFICE, NARWANA

Present :

Shri O. P. Parmar, A. R., for the workman.

None for the management (*ex parte*),

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endst. No. S.O.V./B/89-89/25083, dated 14th June, 1989 :—

Whether the termination of services of Shri Anup Singh, is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the statement of claim that he was appointed as salesman on 23rd April, 1987 on the pay of Rs. 300/- plus commission. The management given a charge-sheet to the workman on 29th April, 1987. The Enquiry Officer had not given him any opportunities during the course of enquiry and he has not done natural justice with him. On the report of Enquiry Officer the management had terminated his services w. o. f. 23rd August, 1988 so hence this claim petition was filed that he be reinstated from the day he was terminated and is also entitled to compensation during the days of unemployment.

3. The written statement filed by the management that reference is not maintainable in the present form ; in view of various provisions of Haryana Co-operative Societies Act, this Court has no jurisdiction ; that the respondent confed is a registered co-operative society and under section 102 of the Haryana Co-operative Societies Act, if any dispute arises, the same is to be referred to the Registrar, for arbitration and no Court including Labour Court/Industrial Tribunal has jurisdiction in the matter. The appointment of the workman as Salesman on consolidated salary of Rs. 300 plus sale incentive on purely temporary basis and his services were governed by his appointment letter. The workman was chargesheeted on 29th April, 1987 for embezzlement/misappropriation of the Confed funds and he was handed over memorandum of charges, charges, statement of allegations etc. On the basis of report dated 4th March, 1987 submitted by the Area Manager, Confed, Hansi. Shri Karnail Singh, G. M. was appointed as Enquiry Officer. The Enquiry Officer had allowed due opportunities to both the parties

and after considering the whole facts submitted his detailed report and on the basis of enquiry report order of termination was passed. Before termination of services the applicant was given show cause notice and he was heard personally. The workman had mis-appropriated and embezzled the Confed funds. One of the shortages notice of Rs. 4116.40 paise was issued by the Area Manager to the workman, on 23rd October, 1987 to deposit the same. The villagers of village Dumerkha had written to the Managing Director, Chandigarh a letter which they stated that workman does not distribute sugar and other items to them. Copy of appointment letter, report dated 4th March, 1987 of Area Manager, memo of charges, allegation of charges, enquiry report, show cause notice, termination order attached in annexure A to I. As the applicant had embezzled, misappropriated Confed funds, his petition is liable to be dismissed.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) As per terms of reference ?
- (2) Whether any just and fair domestic enquiry was held, if so, to what effect ?
- (3) Whether the reference is not maintainable ?
- (4) Whether this Court has no jurisdiction as alleged in preliminary objection No. 2 and 3 ?
- (5) Relief ?

5. Issue No. 2 has been treated as preliminary issue and my finding on the issue No. 2 is as under :—

Issue No. 2:

6. The management has examined Shri Karnail Singh, Enquiry Officer as MW-1 and also examined Shri Rajbir Singh as MW-2 and evidence thereafter was closed. The workman was examined himself as WW-1 and after tendering no dues certificate and Ex. WX and Ex. WX-1 evidence was closed.

7. Statement of Karnail Singh is that he had issued the charge-sheet Ex. M-2 to the workman regarding allegations and the applicant was also given a memo Ex. M-3 and workman also given the allegations in the charge-sheet which is Ex. M-4. He has found the applicant guilty of the charges and come to the conclusion that he had deposited the amount of Rs. 17089 after 19 days and deposited the amount of Rs. 5195-36 paise after 35 days of recovery. He also made statement that notice Ex. M-6 is also given to the applicant and,—vide Ex. M-7 services were terminated. He also admitted that he has not given the detail Ex. M-2 to the workman and he had not recorded the proceedings of the enquiry and statement of any witness. He also admitted that the applicant had replied that he was not having record in possession, there was no proceedings in writing with him. He also recorded the statement of P. O. where he made statement that he was not having any documents and all the impugned money has been deposited.

8. MW-2 Rajbir Singh made a statement that the applicant was issued the notice of embezzlement of Rs. 4116.40 paise copy of which is Ex. M-9 which was found by supervisor on checking and also sent a letter the copy of which is Ex. M-10. Complaint made by the villagers that Sugar etc. was not supplied. He also admitted that the applicant had deposited the amount which has been alleged,—vide Ex. M-9.

9. From evidence examined by the management it is proved that the workman was not given the opportunities to cross-examine the witnesses and examine to witness. When the management had not produced the evidence and concluded that the applicant had embezzled the amount nothing on the basis of presumption can take place in evidence. It is not proved that applicant had misappropriated the amount.

10. The learned authorised representative for the workman also made submission that it is the duty of the supervisor to keep the money in hand and not the workman and as brought to my notice Rule-V of Function of Rural Retail Shops working under the rural area. It is given that the supervisor would be liable for the value of stocks received by him till he actually delivers the goods to the concerned salesman. Supervisor would obtain the signatures of the concerned salesman on the stock transfer memo, in token having acknowledged and received the goods by him in good condition and as per description on the Memo.

11. Rule-VI this proves that the salesman, incharge retail shop sell the goods on cash and carry basis at retail price applicable to each article. He would be responsible for less charge if any. Rule VIII is that at the close of the day, salesman would prepare daily sale summary. Sale proceed would be collected by the supervisor against printed provisional cash receipt. Supervisor would received the sale proceeds from the salesman for deposit with the respective District/Sub-Divisional Office on behalf of the concerned salesman alongwith daily sale summary. Supervisor would be liable to the amount received by him from salesman till he actually deposit with the District/Sub-Divisional office against proper receipt on behalf of the concerned salesman.

12. It is true that salesman is responsible for sale of the goods and does not prepare the account. The supervisor could recover sale prices of the goods from the workman. It is proved that the salesman had shown him every sale account and sale money and after that salesman could not be held responsible and only supervisor but there is no such plea. Hence I am of view that the salesman could be held liable for keeping any money but it is not proved from evidence on record that in domestic enquiry was properly conducted against the workman and hence I am of the view that the fair and proper enquiry was not conducted against the workman. Hence I decide this issue against the management and in favour of the workman.

13. The learned authorised representative for the workman has made statement on 20th October, 1994 that he does not want to lead any evidence on remaining issues hence I took up all the issues as under :—

Issue No. 3 and 4:

14. Both these issues are not pressed or argued hence I decide both these issues against the management.

Issue No. 1:

15. As I have held,—vide deciding issue No. 2 that fair and proper enquiry was not conducted against the workman. The workman has worked for about only sixty days thereafter he was suspended and he was terminated from services on 23rd August, 1988 which is to mean that he had not conducted work upto 29th April, 1987. He remained in service for all these period. The workman had made statement that he was appointed in the year 1981 as salesman but his statement made by him in the statement of claim and the demand notice of the workman is otherwise. The copy of appointment letter of the workman made by the respondent and appointment letter was issued on the date of 23rd April, 1981 but as the applicant's case in his claim statement and demand notice to the effect that he was appointed in the year 1987 his case that he was appointed 1981 cannot be considered.

16. As the workman had not completed 240 days in service section 2 (oo) does not come and Section 25-F can not held applicable and hence I am of the view that the reference petition is liable to be dismissed. Hence I decide this issue against the workman.

Issue No. 5 (Relief):

17. In view of my findings on the above issues I dismiss reference petition. The parties are left to bear their own costs. The reference is answered and returned accordingly.

The 24th October, 1994.

P. L. KHANDUJA,

Presiding Officer,

Industrial Tribunal-cum-Labour Court,
Rohtak.

Endorsement No. Ref. 214—94/2730, dated the 27th October, 1994.

Forwarded (in duplicate) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,

Industrial Tribunal-cum-Labour Court,
Rohtak.